

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
AMUND MOMB,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 990

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$25 civil penalty for an alleged open burning violation, having come on regularly for an informal hearing before the Pollution Control Hearings Board on the 1st day of July, 1976 in Spokane, Washington; and appellant Amund Momb appearing pro se, and respondent Spokane County Air Pollution Control Authority appearing through its attorney, James P. Emacio, Deputy Prosecuting Attorney, and Board member present at the hearing being W. A. Gissberg, and the Board having considered the exhibits, records and files herein and having reviewed the proposed Findings of Fact, Conclusions of Law and Order

1 of the presiding officer mailed to the parties on the 16th day of
2 July, 1976, and more than twenty days having elapsed from said service;
3 and

4 The Board having received no exceptions to said proposed Findings.
5 of Fact, Conclusions of Law and Order and the Board being fully advised
6 in the premises; now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order dated the 16th day of
9 July, 1976, and incorporated by reference herein and attached hereto
10 as Exhibit A, are adopted and hereby entered as the Board's Final
11 Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 24th day of August, 1976.

13 POLLUTION CONTROL HEARINGS BOARD

14 Chris Smith
15 CHRIS SMITH, Chairman

16 Art Brown
17 ART BROWN, Member

18 W. A. Gissberg
19 W. A. GISSBERG, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1	IN THE MATTER OF)	
2	AMUND MOMB,)	
3	Appellant,)	PCHB NO. 990
4	v.)	FINDINGS OF FACT,
5	SPOKANE COUNTY AIR)	CONCLUSIONS OF LAW
6	POLLUTION CONTROL AUTHORITY,)	AND ORDER
7	Respondent.)	

8 An informal hearing on this matter came on before
9 Board Member, W. A. Gissberg, on July 1, 1976 in Spokane,
10 Washington. Appellant appeared pro-se. Respondent appeared
11 by and through its attorney, James P. Emacio.

12 Having heard the testimony, the Board caused the
13 entry of the following

14 FINDINGS OF FACT

15 I.

16 Respondent, pursuant to Section 5, Chapter 69, Laws
17 of 1974 (3rd Ex. Sess.), has filed with this Board a certified
18 copy of its Regulation I, the contents of which is judicially

1 noted. Respondent added to Section 6.01(A), on January 5, 1976,
2 the following amendment:

3 "8. Open warming fires at temporary
4 construction and demolition sites subject to
the following conditions:

5 a. Fire shall be confined in a
barrel or portable stove..."

6 The effect of the foregoing regulation is to allow confined
7 warming fires at certain sites. Open fires of the type herein-
8 after described are and were unlawful.

9 II.

10 Appellant is a subcontractor in construction work
11 and while so engaged on February 4, 1976 in Spokane County,
12 Washington, ignited an open warming fire not confined in a
13 barrel or portable stove. The weather was cold (well below
14 freezing), clear and windy (a chill factor of -22°F.) at the
15 time the fire was started (7:30 a.m.) for the purpose of warm-
16 ing the hands of workmen and to assist in keeping a compressor
17 operating. At 11:30 a.m. when the fire was observed by one
18 of respondent's inspectors, all of the workmen were working
19 inside the houses then being constructed, the windows and
20 doors of which had been installed.

21 III.

22 Appellant contends that he was unaware that fires of
23 the type ignited by him were not permitted. He has been in the
24 construction business for several years in Spokane, but appar-
25 ently did not become aware of the media coverage of the burning
26 amendment adopted on January 5, 1976. Prior to that date it

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 was the policy of respondent to allow warming fires of clean
2 materials in barrels or stoves. The adoption of the amendment
3 to respondent's regulation merely formalized its prior tolerance
4 policy.

5 IV.

6 Appellant violated respondent's Regulation 1 for which
7 a civil penalty of \$25.00 was imposed.

8 V.

9 Any Conclusion of Law hereinafter stated which may be
10 deemed a Finding of Fact is hereby adopted as such.

11 CONCLUSIONS OF LAW

12 I.

13 The Notice of Violation and the civil penalty (which
14 is reasonable in amount) should be affirmed.

15 II.

16 Ignorance of the requirement that warming fires at
17 construction sites must be confined in a barrel or portable
18 stove is no excuse. It would not be in the public interest
19 to allow violations of air pollution regulations to go un-
20 penalized because of the ignorance of the offender. To do so
21 would be, in effect, to allow all first time violators to
22 escape penalty for breach of respondent's regulations which are
23 designed to reduce the health hazards of air pollution in the
24 Spokane area.

25 III.

26 Any Finding of Fact which should be deemed a Conclusion

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 of Law is hereby adopted as such.

2 From these Conclusions the Board makes and enters this

3 ORDER

4 The Notice of Violation and Civil Penalty in the amount
5 of \$25.00 is affirmed.

6 DATED this 16 day of July, 1976.

7 POLLUTION CONTROL HEARINGS BOARD

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10 W. A. GISSBERG, Member
11 and Presiding Officer
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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER